

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 99 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHBHAI BHIKHABHAI VAGHARI @ TALPADA THRO' BROTHER

Versus

STATE OF GUJARAT  
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Appearance:

MR MC BAROT for Petitioner  
RULE SERVED for Respondent No. 1  
MR ND GOHIL, APP for Respondent No. 3  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Heard the learned advocates. The petitioner challenges the order of preventive detention dated 25th August, 1999 made against him by the District Magistrate, Kheda under the powers conferred upon him under

Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the Act")

2. Along with the order of detention the petitioner has been served with the grounds of detention and the supporting materials. The grounds of detention suggest that as many as 5 prohibition cases have been registered against the petitioner and are pending trial. In each of the said cases, the petitioner was found to be in possession of a large quantity of country liquor. It is, therefore, held that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act. It is further held that consumption of country liquor is injurious to health and such persons move around inebriated. Their presence in the society makes the people apprehensive of their well-being. Hence, the petitioner's activities are held to be prejudicial to the maintenance and public order within the meaning of Section 3 (4) of the Act and the explanation thereto. Besides, some four persons, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner. The statements have been verified and found to be genuine. It is further recorded that the petitioner is required to be prevented from carrying on his anti-social activities with immediate effect and no other preventive action would be effective.

3. It is contended that :

(a) the detaining authority has not supplied all the relevant and vital materials to the petitioner, inasmuch as, in two of the offences i.e. C.R.No.243/99, registered on 25th April, 1999 and C.R.No.495/99 registered on 26th May, 1999, though the petitioner was released on bail, the applications for release on bail made by the petitioner have not been supplied to the petitioner along with the other supporting materials.

(b) The last of the offences was registered on 26th May, 1999, and the petitioner was released on bail on 27th May, 1999. However, the impugned order has not been made until 25th August, 1999 i.e. there was no imminent danger of breach of peace on account of the petitioner's alleged anti-social activities. The order of preventive detention, therefore, was not warranted. The power of preventive detention has thus been wrongly exercised.

(c) The detaining authority has failed to apply

his mind to the possibility of preventing the petitioner from carrying on his anti-social activities by moving the Court for cancellation of bail, the impugned order is, therefore vitiated for non-application of mind.

4. The petition is contested. Mr. Gohil has submitted that in the aforesaid two offences being C.R.No.243/99 and C.R. No.495/99, registered in Nadiad Town Police Station, petitioner was released on bail by the police officer concerned, Mr. Gohil has relied upon the bail bonds executed by the petitioner in the abovereferred two offences. On perusal of the said bail bonds, it is evident that the bail was given to the concerned police officer and not to the Court. There being no application for bail made by the petitioner, the question of furnishing the same did not arise. Upon perusal of the record it further appears that though the last of the offences was registered on 26th May, 1999, the witnesses had given their statements as late as on 13th August, 1999 and 16th August, 1999. Considering the dates of the statements given by the witnesses, the order of detention made on 25th August, 1999, cannot be said to be made belatedly as contended, i.e. after all the materials were gathered by the detaining authority, the order of detention had been made within less than a week. The judgment of this Court in the matter of Sonaji Galaji Thakor vs. State of Gujarat (Special Civil Application No.7034 of 1999, decided on 10-1-2000, Coram : Mr. Justice A.K. Trivedi ) relied upon by Mr. Barot shall not be applicable in the facts of present case. In the said case, the detenu was detained some three months after all the relevant materials were gathered by the detaining authority and the delay was not explained either in the grounds of detention or by filing an affidavit. As observed hereinabove, there being no undue delay in making the impugned order of detention, the question of explaining the same does not arise. Mr. Barot at this stage has relied upon the judgment or the Hon'ble Supreme Court in the matter of Anand Prakash vs. State of U.P. (A.I.R. 1990 SC, 516 ). In the said matter the detenu was detained under the National Security Act. The Court on facts found that some 20 kilograms of copper wire was stolen on 14th February, 1987 and melted wire was recovered from one Munshi Sharma-the accused on 3rd March, 1989, but no action was taken till 2nd May, 1989. The Court further found that the detenu had no past criminal history and there was no credible material indicating that the detenu was involved in the commission of crime. The Court, therefore, held that the same could not form base of satisfaction for

detention. While considering the delay in taking the action the Court held that "inspite of the fact that the recovery statement itself was made as early as 3rd March, 1989, no action was taken till 3rd May, 1989. Nothing more is stated in the detention order. The delay has also not been satisfactorily explained in the counter statement of the respondent. The ground instance therefore, could not (be) a proximate cause for a sudden decision to take action under the National Security Act and this also vitiate the order." As observed hereinabove on facts it cannot be said that the impugned action has no proximate relation with the offences registered against the petitioner and the evidence gathered against him. The action, therefore, cannot be vitiated for that reason. Further, I do not suppose that the detaining authority has failed to apply its mind to the other alternative preventive measures. The grounds of detention specifically records that such preventive measures would not be effective and the petitioner cannot be prevented from carrying on his anti-social activities with immediate effect except by resorting to the preventive detention under the Act.

5. Mr. Barot has also contended that in respect of the genuineness of the statements given by the witnesses, the detaining authority has relied upon the opinion of the sponsoring authority and has failed to record his personal satisfaction in respect of the genuineness of such statements and the apprehension of retaliation voiced by the said witnesses. The action of the detaining authority in not disclosing the identity of the said witnesses is, therefore, illegal. By not furnishing all the relevant materials to the petitioner, the petitioner's right to make the representation has been infringed. In answer to this contention Mr. Gohil has submitted that in any view of the matter, the genuineness of the statements made by the witnesses had been verified by the Sub Divisional Magistrate and no further verification was required to be made by the detaining authority. The contention is not acceptable. The law requires that the detaining authority should record its personal satisfaction. The detaining authority, therefore, ought to record his personal satisfaction as regards the genuineness of the statements made by the witnesses and the need for the exercise of powers conferred under Section 9 (2) of the Act. In absence of such personal satisfaction arrived at by the detaining authority, the impugned action should stand vitiated.

6. The petition is, therefore, allowed. The impugned order dated 25th August, 1999, is quashed and

set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

24-3-2000 ( Ms. R.M.Doshit,J. )

mithabhai